



March 21, 2002

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2002-1412

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160146.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the position of Law Librarian at the Lynaugh Unit. Specifically the requestor asks for:

1. The questions asked and the proper answers.
2. The answers given by Mr. Arthur Chavez.
3. The answers given by Mr. Gorsshans.
4. Copy of Mr. Chavez application.
5. List of person voting and how each voted.

The requestor also seeks information concerning interviews for the law librarian position in August 2000.

You claim that the interview questions and answers are excepted from disclosure under section 552.122 and that certain social security numbers are excepted from disclosure under section 552.117 of the Government Code. We note that you have not submitted to this office information responsive to each item in the request. We therefore assume that you have released to the requestor all such responsive information to the extent it exists. See Gov't Code §552.221; Open Records Decision 665 (2000). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). You argue that questions 1 through 6 and question 8 of the June 2000 job interview are test items excepted under section 552.122. You also assert that questions 2 through 6 of the December 2001 job interview are excepted under 552.122. Having reviewed the submitted questions, we agree that they are "test items" as contemplated by section 552.122(b). Therefore, you may withhold the questions and answers under section 552.122(b).

You also raise section 552.117 of the Government Code, which excepts from disclosure the home address, home telephone number, or social security number of an employee of the department, as well as any information that reveals whether an employee of the department has family members, regardless of whether the employee complies with section 552.024. *See* Gov't Code § 552.117(3). In releasing the responsive information, the department must withhold the social security numbers of an employee of the department pursuant to section 552.117(3). We note, however, that the requestor has a special right of access to his own social security number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (providing that person or person's authorized representative has special right of access, beyond that of general public, to information held by governmental body that relates to that person and is protected from disclosure laws intended to protect that person's privacy interests). The department may not withhold the requestor's social security number under section 552.117(3).

In summary, the department may withhold questions and answers 1, 2, 3, 4, 5, 6, and 8 from the June 2000 job interview. The department may also withhold questions and answers 2, 3, 4, 5, and 6 of the December 2001 job interview. The department must withhold the social security numbers of an employee of the department pursuant to section 552.117(3), however, the department may not withhold the requestor's social security number under 552.117(3).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

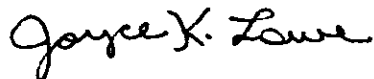
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 160146

Enc: Submitted documents

c: Mr. Kenneth W. Grosshans
1000 South James Street
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(w/o enclosures)